RECENT LEGAL LITERATURE

COMMENTARIES ON THE LAW OF TORTS. A philosophic discussion of the general principles underlying civil wrongs *ex delicto*. By Edgar B. Kinkead, of the Columbus (Ohio) Bar, Professor of Law, Ohio State University. 2 Volumes, pages xxx, 1739, San Francisco, Bancroft-Whitney Company, Law Publishers, 1903.

This latest addition to the law of torts is a work in two volumes comprising fourteen hundred pages of text, a table of about eight thousand cases and an index covering over a hundred pages all in the excellent mechanical form characteristic of the publishers.

The author of these "Commentaries on the Law of Torts," a name which he applies to his work with confessed misgivings as to its propriety, has endeavored to follow out the theory to which Sir Frederick Pollock gave expression "that there is really a law of torts, not merely a number of rules about various kinds of torts, that there is a true living branch of the common law and not a collection of heterogenous cases." Proceeding upon this theory, of which he is an evident admirer, the author has collected a store of valuable material, general and elementary on the whole, and has produced a meritorious work notwithstanding omissions of matter of such importance as to command consideration in any work dealing with the modern law of torts and despite a failure to refer to such valuable and interesting cases as *Lumley* v. *Gye* and *Allen* v. *Flood*. But the serious blemish on the author's work from the literary standpoint is faulty and inelegant English of such frequent occurrence throughout the work as to indicate habit of expression rather than accident.

In respect to the theory by which the author sets such great store there may be doubt, we think, whether it is of such substantial value to the practitioner as the author seems to suppose. The text-book is to the lawyer a tool of his trade the prime purpose of which is to afford the readiest assistance in the shortest time. This work being designed for the practitioner must be measured by his gauge and not by the gauge of the student or teacher of law.

The duty imposed upon the reviewer involves an answer to the question whether this work measured by the standard above referred to is valuable to the practitioner. The answer to the question must, we think, be decidedly affirmative and that too despite the faults to which we have alluded and which are apparent.

The work is valuable to the practitioner not because the author has followed a particular theory, not because he has pursued a plan of treatment and an arrangement and order of subjects peculiar to himself to which he attaches an importance not their due, but because he "has endeavored to discover what the law is and set it down," and has in good measure accomplished that endeavor—and because, moreover, he has, to a reasonable degree, performed his undertaking announced in his preface as follows: "Upon questions of unusual importance, especially where conflict of authority seems to prevail, what appears to be the true doctrine is carefully worked out and discussed in the text, while the position of each state in respect thereto is shown by suffi-

cient excerpts from the cases in the particular state in the notes, the states appearing in alphabetical order." One of the questions such as the author mentions and on which the authorities seem to be in irreconcilable conflict is whether damages can be recovered for physical injuries induced through fright or mental disturbance, the fright or mental disturbance and not the physical injury being the direct and immediate result of the negligent act. In respect to this subject the author carries out the plan announced in the quotation last preceding, but stops short of giving the profession the benefit of his own researches as to what should be the true rule. In such case we think a full discussion and opinion of an author who has made a special study of the subject would have been a welcome and important aid to the profession. And this too, we think is the province of legal authorship and a valuable part of an author's work.

In direct continuity with the last preceding quotation from the preface the author further states: "The design or purpose is that the reader may be able to determine what the law is by reading text or note, without in many instances consulting the cases." This feature of the work, conceding all that is claimed, can be valuable only where the authorities are not accessible to the practitioner. But where the authorities are obtainable it is the habitual practice of careful lawyers and judges to resort to the cases themselves to settle such disputed questions as the author refers to, a practice so firmly fixed and so commendable withal that no text-book can or ought to disturb it, however excellent the text-book may be.

It will be disappointing to the practitioner, we fancy, that the subject of proximate and remote cause is not accorded in this work that full discussion which its importance demands, and for which the later cases have furnished so full opportunity. Such treatment as the author gives to this subject is incidental.

While we think that Mr. Kinkead's work would have been of more value to those for whom it is designed had it dealt in more detail with the newer subjects of the law of torts and to less extent with the older subjects fully covered by early treatises, we commend it to the profession not withstanding those minor defects which an examination of the work has disclosed and of which candor in a review compels mention.

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REPORT OF THE FIFTEENTH ANNUAL MEETING OF THE VIRGINIA STATE BAR ASSOCIATION. Edited by Eugene C. Massie, of the Richmond Bar. Pages, 432. Everett Waddey Co. Richmond. 1903.

The Virginia Bar Association's well edited and well printed annual reports invariably contain interesting matter of permanent value. To an outsider who has had the good fortune to attend one of these meetings of Virginia lawyers the reports are doubly interesting: he reads much between the lines. The printed page—sometimes unavoidably dry—makes no mention of sparkling wit and sparkling water—as natural to Virginia as is her cordial hospitality—nor of sparkling wine, which, on occasion, flows so freely that one believes it also to be native—the generous product of her sunny slopes. But for those not quite so fortunate as the reader between the lines there is much solid food for thought in this volume.